

RESTRICTIONS FOR
PRESERVE @ JONATHAN
CREEK

Haywood County--Register of Deeds
Amy R. Murray, Register of Deeds
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AMENDED DECLARATION OF COVENANTS, RESTRICTIONS, RESERVATIONS, EASEMENTS
AND CONDITIONS

THIS AMENDED DECLARATION made this the 12th day of January 2005, by PRESERVE AT JONATHAN'S CREEK, LLC, an Indiana limited liability company duly authorized to do business in the State of North Carolina, [hereinafter called "Declarant"], the owner of real property located in Ivy Hill Township, Haywood County, North Carolina, known as "PRESERVE AT JONATHAN'S CREEK", being more particularly described on the surveys and plats by Moore's Land Surveying recorded June 21, 2002, in Plat Cabinet C, Slot 3044, and recorded July 29, 2002 in Plat Cabinet C, Slot 3076, Haywood County Registry.

WHEREAS, Declarant has previously recorded a Declaration [Book 524, Page 1888, Haywood County Registry] and an Amended Declaration [Book 527, Page 2224, Haywood County Registry];

WHEREAS, Declarant by this document is amending and superceding the above-described Declaration and Amended Declaration];

WHEREAS, Declarant is the owner and developer of a larger tract of real property located in Ivy Hill Township, Haywood County, North Carolina, generally known as THE PRESERVE AT JONATHAN CREEK, which subdivision has been and is being developed and divided into various separate phases but which phases are all planned to be part of a coherent and connected development served by a connected system of easements and rights-of-way for roads and utilities;

WHEREAS, all of the various phases of THE PRESERVE AT JONATHAN CREEK [as designated by properly recorded subdivision plats] regardless of when such phases may be acquired, developed or recorded shall be unconditionally considered for all purposes as a single subdivision though developed and divided into various separate phases which subdivision is a coherent and connected development served by a connected system of easements and rights-of-way for roads and utilities;

WHEREAS, all of the various phases of THE PRESERVE AT JONATHAN CREEK [as designated by properly recorded subdivision plats] regardless of when they may be acquired, developed or recorded shall be subject to covenants, restrictions, reservations, easements and conditions for not only the mutual benefit and protection of Declarant and its successors and/or assigns, but also to protect the unique character of all of the various phases of THE PRESERVE AT JONATHAN CREEK and to help assure ever-increasing property values within the subdivision;

WHEREAS, these covenants, restrictions, reservations, easements and conditions shall hereinafter be called the "Restrictions";

NOW THEREFORE, Declarant does hereby declare PHASE ONE, PHASE TWO, PHASE THREE AND PHASE FOUR of THE PRESERVE AT JONATHAN CREEK to be subject to the covenants, restrictions, reservations, easements and conditions as follows:

- 1) RESIDENTIAL PURPOSES. Lots shall be used for residential purposes only with single-family detached dwellings located thereon with the exception that one [1] home office [not to exceed 25% of the total heated living space] used exclusively by the lot owner [or his dependents, guests, servants, tenants and/or visitors] shall be permitted within each family dwelling unit. Other than

such home office, no other commercial use, industrial use, manufacturing use, religious undertaking or use, use for private or public rallies, civic or fraternal organizational headquarters use or use for the on-site distribution of goods or services shall be permitted. (Later phases of THE PRESERVE AT JONATHAN CREEK may allow single-family attached dwellings however Phase One shall contain only single-family detached dwellings.)

- 2) **RENTAL.** Completed family dwelling units may be rented or leased for use by the tenant as a single-family dwelling subject to all provisions of the Restrictions.
- 3) **BUILDING SIZE.** No structure [except as herein provided] shall be erected, altered, placed or permitted to remain upon any lot other than one [1] single-family detached dwelling and one [1] detached outbuilding. Such structures are herein collectively referred to as a "family dwelling unit". No family dwelling unit shall be constructed of less than 1200 square feet of heated living space in the dwelling itself of which at least 720 square feet shall be located on the main living level. Garages, porches, decks, patios, greenhouses, unfinished basements or cellars shall not be considered "heated living space" in meeting the above-described requirements.
- 4) **BOUNDARIES.** No lot shall be subdivided nor its boundary lines relocated for any purpose except to merge an additional lot or part thereof in order to create a lot larger than the original. Notwithstanding such restriction, Declarant retains and reserves the right to re-plat any lot [or lots] shown upon a plat prior to the original conveyance of such lot by Declarant for any purpose in order to create a modified lot [or lots].
- 5) **SETBACKS.** No family dwelling unit shall be placed within fifteen [15] feet of the side boundary of any lot and within fifteen [15] feet of the boundary of any subdivision road easement. In the event that the recorded plat designates a specific building area for a specific lot, the family dwelling unit on such lot shall be placed within the designated building area regardless of other setback requirements.
- 6) **EASEMENTS.** Declarant retains and reserves a perpetual alienable and releasable easement and right-of-way on, over and under the ground to erect, maintain, repair, replace and use electric and telephone poles, wires, cables, conduits, sewers, storm water drains, water lines, and other suitable equipment for the conveyance and use of electricity, cable television, security cable equipment, telephone equipment, gas, sewer, water, electronic communications or other private or public conveniences or utilities on, over or under the rear and front fifteen [15] feet of each lot and ten [10] feet along all sides of each lot, and on, over or under such other areas as may be shown on a recorded plat or plats. All water and/or sewer service to the lots shall be located within the easements herein retained or within the easements, rights of way or such other areas shown on the recorded plats. Declarant may convey to the entity providing such water and/or sewer service such utility easements as the entity may require from time to time in order to provide such services.
- 7) **MOBILE, MANUFACTURED OR MODULAR HOMES.** No mobile home shall be permitted upon any lot at any time. No family dwelling unit shall consist of or have incorporated within it [whether upon wheels or fixed upon a foundation] any trailer or mobile home [whether single-wide, double-wide or larger]. Provided, however, after the submissions required by Paragraph 9 and with the written permission of Declarant [which permission may be withheld for any reason], a family dwelling unit may consist of or have incorporated within it prefabricated components that were manufactured off-site if such components are comparable to an otherwise site-built family dwelling unit built in compliance with the applicable State and County building codes and regulations. This exception does not allow in any event any construction or improvement that was at any time a trailer or mobile home [whether single-wide, double-wide or larger regardless of whether upon wheels or fixed upon a foundation].
- 8) **RECREATIONAL VEHICLES, CAMPERS AND TEMPORARY STRUCTURES.** No structure of a temporary nature [including any recreational vehicle, camper, tent, motor home or travel trailer] may be used as a residence or occupied for any period of time. No basement, garage or partially completed structure may be occupied for any period of time. Provided, however, an owner-builder or contractor may use temporary construction buildings or trailers during any permitted period of construction for storage or as a construction office for the construction then taking place upon that

lot. Any such temporary construction buildings or trailers shall be placed as far as possible from lot lines and roadways.

9) CONSTRUCTION DOCUMENTS.

- a) Prior to commencing any construction or the placement of any improvements, a lot owner shall submit to Declarant copies of the proposed construction documents. Such documents shall include all plans, specifications [including designations of all exterior colors, exterior finish materials and other construction materials], elevations and a site plan showing the location and orientation of all buildings, driveways, culverts, drainage structures and other improvements. Such documents shall be referred to collectively as the "construction documents". In the event that a lot owner intends to alter the natural drainage pattern of a lot, the submitted site plan shall show the planned changes in contour and planned drainage pattern of the lot.
- b) Prior to the commencement of any construction or the placement of any improvements upon a lot, all of the construction documents shall be approved by Declarant in writing.
- c) Prior to the commencement of any construction or the placement of any improvements upon a lot, a lot owner shall submit to Declarant a copy of the insurance certificates showing the lot owner's and/or contractor's compliance with the insurance requirements of Paragraphs 16 and/or 17. Thereafter, in the event that any required insurance coverages are modified, the lot owner shall submit a certificate to Declarant setting forth such modifications.
- d) Prior to the commencement of any construction or the placement of any improvements upon a lot, a lot owner shall pay to Declarant a nonrefundable "construction impact fee" of \$300.00. Such fee shall be applied against the costs to repair any damage to a subdivision roadway, right-of-way and/or easement caused by construction upon the lot or by the delivery of construction materials or equipment to the lot during the period of construction by a lot owner.
- e) After receiving approval of the construction documents by Declarant, a lot owner shall construct the proposed improvements in accord with the details, descriptions and specifications contained within the construction documents as approved.
- f) In the event that a lot owner fails to construct the proposed improvements in accord with the details, descriptions and specifications contained within the construction documents as approved, such failure shall be considered a breach of the Restrictions.

10) TYPE OF CONSTRUCTION. All construction shall be completed with an exterior design and of exterior construction materials that are in the sole discretion and opinion of Declarant consistent with the overall design criteria of the subdivision.

11) DRAINAGE PATTERN. All acts carried out that alter the natural drainage pattern of a lot shall be considered to be construction subject to the provisions of Paragraphs 9 and 10 herein.

12) EXPOSED BLOCK. No concrete or cement block shall be left exposed in the completed construction unless such block are faced with stucco, plaster, rock, brick, wood or other finish approved by Declarant. Provided, however, that "architectural block" the front face of which is designed and manufactured to serve as a final finish may be left exposed in the completed construction if such block is approved by Declarant pursuant to Paragraphs 9 and 10 herein. Architectural block left exposed in the completed construction shall in no event exceed five [5] feet in height above the finished grade adjoining the exposed architectural block.

13) BUILDING HEIGHT. No structure exceeding thirty-two [32] feet in height above the highest finished grade adjoining such structure shall be permitted upon any lot.

14) GRADING. Prior to the commencement of any construction of a family dwelling unit to be built without a basement, the lot owner shall complete 100% of the final grading consistent with the submitted and approved construction documents. Prior to the commencement of any construction of a family dwelling unit to be built with a basement, the lot owner shall complete 90% of the final grading consistent with the submitted and approved construction documents. In either case, the lot owner shall provide for erosion control and/or abatement as required by law or as may be required by Declarant.

- 15) CONSTRUCTION.** No construction or the placement of any improvements shall take place upon any lot without the lot owner and/or contractor first obtaining all of the applicable permits required by the appropriate County and/or State authorities. All construction or the placement of any improvements shall comply with and be completed in accordance with all of the applicable State and County building codes and regulations. After the commencement of any construction, the exterior of all buildings under construction [including doors, windows, trim, finished roofing and final grading] shall be completed according to the following:
- a) Within six [6] months of the date that construction is commenced - Buildings containing up to 1500 square feet of heated living space;
 - b) Within ten [10] months of the date that construction is commenced - Buildings containing more than 1500 square feet up to 2200 square feet of heated living space;
 - c) Within fourteen [14] months of the date that construction is commenced - Buildings containing more than 2200 square feet of heated living space.
- 16) CONSTRUCTION BY OWNER-BUILDER.** Construction of a family dwelling unit [or any addition thereto] may be carried out by a lot owner who qualifies as an "owner-builder" under the applicable statutes, ordinances and regulations and who otherwise complies with all applicable State building codes, statutes and regulations and County building codes, ordinances and regulations. Such owner-builder shall maintain current public liability and premises liability insurance with limits of at least \$100,000/\$300,000 or as may be set from time to time by Declarant.
- 17) CONSTRUCTION BY CONTRACTOR.** Unless carried out by an owner-builder pursuant to Paragraph 16 above, all construction of a family dwelling unit [or an addition thereto] shall be carried out by a properly licensed North Carolina General Contractor maintaining current workers' compensation insurance and current public liability insurance with limits of at least \$100,000/\$300,000 or as may be set from time to time by Declarant.
- 18) CONSTRUCTION MATERIALS.** No construction materials or building supplies shall be stored upon any lot in view from any roadway except during a permitted period of construction. Any leftover materials, supplies and/or scraps shall be promptly removed from the lot upon completion of such construction. No construction materials, building supplies, debris and/or excavated soil or rock shall be placed or allowed to remain upon any roadway, right of way or easement. During any construction activity upon any lot, all debris shall be contained within the boundaries of the lot and the lot shall be maintained so as to avoid any unclean, unsightly, unkempt condition. The provisions of Section 42 ["Unkempt Conditions"] of this Declaration [as well as all other provisions of this Declaration] shall apply during the period of any construction activity as well as at all other times.
- 19) ROAD IMPACT FEE AND ROAD DAMAGE.** Any damage [in excess of the amount of the construction impact fee described in Paragraph 9] to a subdivision roadway, right-of-way and/or easement caused by construction upon a lot or by the delivery of construction materials or equipment to a lot shall be repaired at the sole expense of the lot owner whose construction activity caused such damage. Such repairs shall be completed within fourteen [14] days of the date of damage. During any construction activity upon any lot, the lot owner shall cause to be maintained a gravel mat of sufficient size and composition that motor vehicles as they pass off of the lot do not track mud and/or dirt onto any subdivision roadway, right-of-way and/or easement. In the event that any mud and/or dirt is tracked from the lot onto any subdivision roadway, right-of-way and/or easement, the lot owner shall have the responsibility for the immediate removal of such mud and/or dirt. In the event that any mud and/or dirt is tracked from the lot onto any subdivision roadway, right-of-way and/or easement and the lot owner fails to immediately remedy the condition, such unremedied condition shall be considered road damage and such condition may be repaired by the Declarant as provided in this section or as otherwise provided in the Restrictions. In the event that such repairs are not completed by the lot owner as required herein, Declarant may make such repairs and the lot owner whose construction activity caused such damage shall indemnify and hold harmless Declarant from the expense of such repairs including all costs of collecting such expense [including actual attorney fees and court costs if any].
- 20) SIGNS.** No signs of any kind shall be permitted upon any lot at any time except one [1] sign containing the name of the lot owner [or tenant] and a street number and one [1] sign placed by a

lot owner [or his agent] designating the specific lot for resale. Such signs shall not exceed eighteen [18] inches by twenty-four [24] inches in outside dimension and shall be placed so that their topmost edge is not higher than forty-eight [48] inches above the ground where the base of the sign enters the ground. Declarant shall have the right to remove any sign that violates any provision of this paragraph; and, in so doing, Declarant is expressly released from any liability arising in connection with such removal.

- 21) **ANIMALS.** No animals, livestock, fowl or poultry of any kind shall be permitted to be raised, bred or kept upon any lot, except that dogs, cats or other commonly domesticated household pets [not specifically prohibited herein] may be kept [provided that such animals are not bred or maintained for commercial purposes]. Exotic animals [including snakes, monkeys, wolves, lions, tigers and other large cats or animals] shall not be permitted upon any lot. Pit Bulldogs or Rottweilers shall not be permitted upon any lot. Pets, if running loose, shall be kept strictly within the boundaries of the lot of their owner. At all other times, pets shall be kept securely upon a leash. No pets are permitted upon any lot if they are kept so as to constitute a nuisance. No more than two [2] animals shall be kept outside upon any lot.
- 22) **TANKS.** All fuel or storage tanks of any kind shall be fully screened or concealed from the view of other lot owners or from the roadways. In complying herewith, such tanks may be buried below ground level. Installation of a tank shall be considered construction.
- 23) **GARBAGE.** Each lot owner shall provide sanitary containers sufficient to contain all trash, garbage and other waste. No trash, garbage, waste, construction debris or other unsightly or offensive material shall be placed or permitted upon any lot. All such containers shall be enclosed or screened from view except on a refuse collection day.
- 24) **METAL BUILDINGS.** No metal buildings shall be permitted upon any lot.
- 25) **OUTSIDE STORAGE.** No outside storage of any sort [except stacked firewood] shall be permitted upon any lot.
- 26) **FENCES.** Only one [1] fence enclosure used for the purpose of containing a pet shall be permitted upon any lot and shall not be placed closer than twenty [20] feet to the boundary of any lot, roadway, right-of-way or easement. Such fence enclosure shall be concealed from the view of other lot owners and/or from the view of persons on subdivision roadways and shall not exceed one hundred and twenty [120] square feet in total area. In no event shall any fence exceed six [6] feet in height above the ground upon which it sits. Installation of a fence shall be considered construction.
- 27) **EXTERIOR LIGHTING.** No street-type, dusk-to-dawn or watchdog-type exterior lighting shall be permitted upon any lot. Low voltage, low wattage and/or landscape-type lighting shall be permitted. Motion and switch-activated lighting [not otherwise excluded] that is attached to a building is permitted. No exterior lighting of any type that is deemed in the opinion of Declarant to be excessive or that materially affects the use or enjoyment of any other lot shall be permitted. Installation of exterior lighting shall be considered construction.
- 28) **ABOVEGROUND SWIMMING POOLS.** No aboveground swimming pools [with the exception of inflatable "kiddy"-type pools not to exceed sixty [60] inches by seventy-two [72] inches in outside dimensions] shall be permitted upon any lot.
- 29) **SWING SETS.** No outside metal swing sets shall be permitted upon any lot.
- 30) **CLOTHESLINES.** No outside clotheslines shall be permitted upon any lot.
- 31) **FREESTANDING POLES.** No outside freestanding poles shall be permitted upon any lot.
- 32) **YARD DECORATIONS.** Installation of outside freestanding yard decorations shall be considered construction. No plastic yard decorations shall be permitted upon any lot.
- 33) **ELECTRIC, CABLE AND TELEPHONE SERVICE.** All transmission lines for electric, cable and/or telephone service shall be installed below ground in accordance with the appropriate rules and regulations of the applicable utility provider. Installation of transmission lines for electric, cable and/or telephone service shall be considered construction.

- 34) **STRUCTURES FOR ELECTRONIC TRANSMISSIONS.** No outside equipment for receiving or transmitting satellite or electronic signals shall be permitted except one [1] structure not to exceed twenty-four inches [24"] in diameter or outside dimensions. Installation of outside equipment for receiving or transmitting satellite or electronic signals shall be considered construction.
- 35) **VEGETABLE GARDENS.** Vegetable gardens not to exceed three hundred [300] square feet are permitted provided that such gardens are located in the rear of the family dwelling unit and no closer than thirty [30] feet to the boundary of the lot, any easement or right-of-way.
- 36) **ARTIFICIAL STREAMS, PONDS AND FOUNTAINS.** Artificial streams, ponds, fountains and similar "water features" shall be permitted but shall be considered construction requiring the approval of Declarant pursuant to the approval procedures Paragraphs 9 and 10 herein. Such water features shall not be located closer than thirty [30] feet to the boundary of the lot, any easement or right-of-way.
- 37) **DRIVEWAYS AND PARKING AREAS.** Lot owners shall maintain their individual driveway and parking areas in a state of good repair. Such areas shall be maintained in order to avoid the growth of vegetation and/or excessive cracking. In addition, paved driveways and parking areas shall be maintained with an appropriate covering of paving material in order to avoid exposed soil.
- 38) **PARKING.** All lot owners of a completed family dwelling unit shall provide sufficient space for parking all motor vehicles off of the subdivision roadways, easements and rights-of-way. No parking of motor vehicles upon the subdivision roadways, easements and rights-of-way shall be permitted. No motor vehicle that is greater than one and one-half [1.5] tons, recreational vehicle, camper, tent, motor home, trailer, travel trailer, heavy equipment or construction equipment shall be regularly parked or stored upon any lot except within an enclosed garage. Pursuant to Paragraph 51 herein, Declarant may grant a variance to allow the parking of a recreational vehicle, camper, motor home or travel trailer outside of an enclosed garage.
- 39) **MOTOR VEHICLES.** No unlicensed, disabled and/or abandoned motor vehicle shall be permitted to be parked or stored outside upon any lot. No major repairs shall be permitted to be performed upon any motor vehicle parked outside upon any lot.
- 40) **TREES.**
- As important design criteria of the subdivision is the maintenance of aesthetically appealing vegetation. Accordingly, excessive tree removal shall not be permitted and no tree[s] measuring eight [8] inches or more in diameter at a point two [2] feet above ground level shall be removed from any lot without the written approval of Declarant.
 - Trees shall be permitted to be trimmed or removed in order to create a reasonable view from the family dwelling unit located upon such lot provided that such trees shall not be trimmed or removed without the prior written approval of Declarant.
 - No tree shall be permitted upon any lot that creates in the opinion of Declarant a major obstruction to the view from a family dwelling unit located upon an adjoining lot. In such event, the tree[s] in question shall be trimmed in order to remove such obstruction at the expense of the lot owner requesting such removal upon a plan to be approved in writing by Declarant.
 - No damaged tree or other vegetation that poses a threat of damage, injury or blockage to any easement, right-of-way or family dwelling unit shall be permitted and such tree or vegetation shall be promptly removed by the lot owner upon whose lot such tree or vegetation is located at the sole expense of such lot owner. Such removal shall not require the prior written approval of Declarant. In the event that such removal is not completed as required herein, Declarant may carry out such removal and the lot owner shall indemnify and hold harmless Declarant from the expenses of such removal including all costs of collecting such expenses [including actual attorney fees and court costs].
- 41) **SEWAGE.** All lots are served by a central sewer system that is part of the Maggie Valley Water District. Each family dwelling unit shall be permanently and properly connected to such central sewer system and all sewage [including gray water] shall be discharged into such central sewer system. All lot owners shall maintain their connection to the central sewer system located upon their lot in good condition so that its continued use and existence shall not constitute a nuisance to

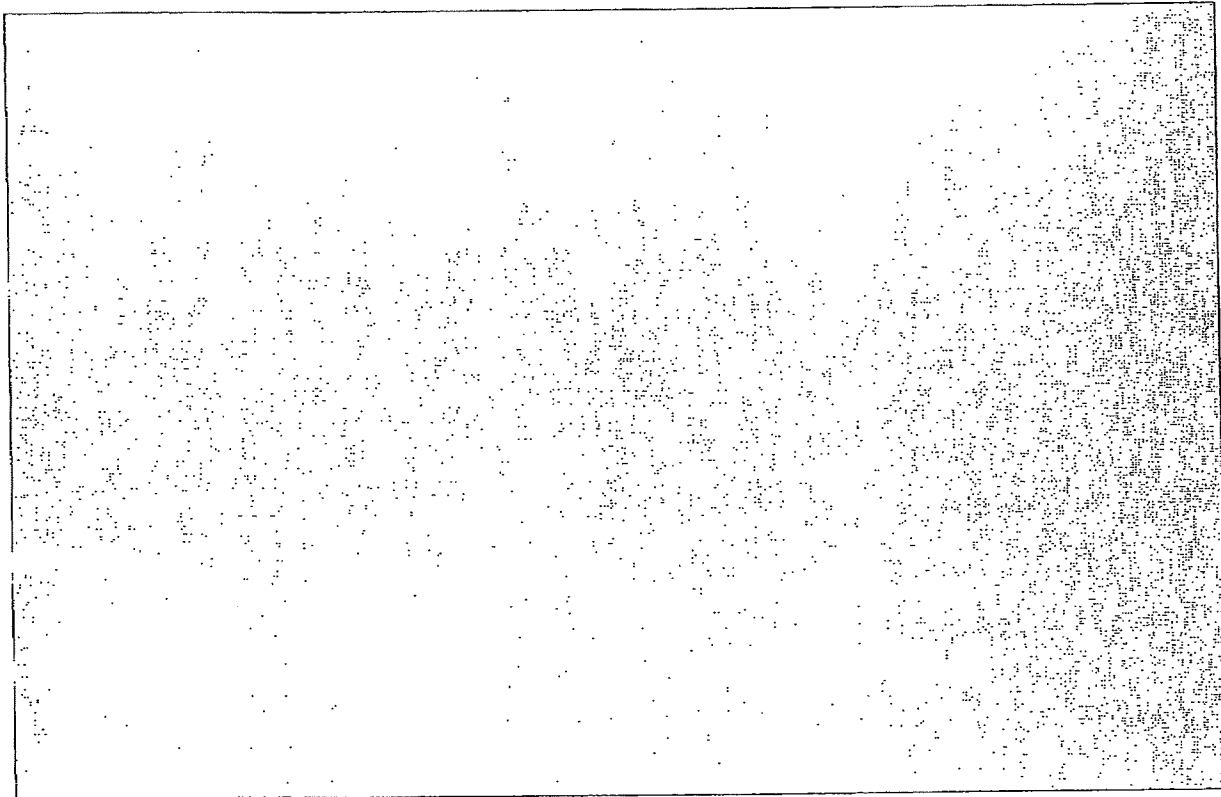
any lot owner. Every family dwelling unit shall have permanent plumbing and running water. No temporary plumbing, water or sewage system shall be permitted upon any lot.

- 42) **UNKEMPT CONDITIONS.** It is the responsibility of each lot owner to prevent the creation or continuance of any unclean, unsightly, unkempt condition of buildings or grounds upon their lot. Declarant shall have the right [but not the duty] to enter upon any lot for the purpose of abating any unclean, unsightly or unkempt condition of buildings or grounds that tends to decrease the beauty of the subdivision as a whole or of any specific lot or area therein. This right to abate shall include the mowing of any lot not kept regularly and fully mowed. The lot owner shall indemnify and hold harmless Declarant from the expenses of such abatement including all costs of collecting such expenses [including actual attorney fees and court costs].
- 43) **EROSION.** Declarant shall have the right [but not the duty] to protect subdivision lots and the roadways, rights-of-way, easements and other common areas of the subdivision from erosion by planting grass, trees, plants and/or shrubs where and to the extent deemed necessary by Declarant using such mechanical means deemed expedient or necessary by Declarant to provide drainage ways and/or drains or other means to protect against erosion.
- 44) **RELEASE.** Whenever Declarant is permitted by the Restrictions to correct, repair, clean, preserve, clean out, abate or take any action upon any lot, roadway, right-of-way, easement or common area, such action shall not be deemed to be a trespass or other tort or to give rise to any liability of any nature.
- 45) **NUISANCE.** No obnoxious or offensive activity shall be permitted upon any lot, roadway, right-of-way, easement or common area nor shall any act be done tending to cause embarrassment, discomfort, annoyance or nuisance to any lot owner [including their tenants or guests] thereby diminishing the enjoyment of any lot owner. No plant, animal, device, thing or activity of any sort whose existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of any lot owner shall be permitted upon any lot, roadway, right-of-way, easement or common area. The operation of dune buggies, mini-bikes, dirt bikes, three or four-wheel all terrain motor vehicles or similar motor vehicles shall be conclusively presumed to be obnoxious and offensive activities.
- 46) **HUNTING.** No hunting and/or trapping of animals, fowl and/or game shall be permitted upon any lot, roadway, right-of-way, easement or common area within the subdivision and no discharge of firearms, weapons, crossbows and/or bows and arrows for any purpose shall be permitted upon any lot, roadway, right-of-way, easement or common area within the subdivision.
- 47) **RESPONSIBILITY FOR OTHERS.** Lot owners assume the responsibility that all dependents, guests, servants, tenants and/or visitors shall comply with all of the Restrictions.
- 48) **ANNUAL MAINTENANCE CHARGE.** Each lot owner [on behalf of each lot owned as of January 1 of each year hereafter] shall be subject to an "Annual Maintenance Charge" fixed by Declarant in an amount equal to a pro rata share of the total cost to which such charges are devoted as herein described, utilizing the following formula wherein total costs are divided by the total platted lots. [As an example, if the total annual costs equal \$4000 and there are 20 total platted lots, the charge per lot will be \$200.] However, such Annual Maintenance Charge shall be at least \$200.00 per lot regardless of the above-described formula. Each lot owner shall pay the Annual Maintenance Charge to Declarant on or before the first day of April each year. The Annual Maintenance Charge shall be devoted to the following:
- a) the costs of maintenance [including re-paving] of the roadways, rights-of-way, easements or common areas shown on the subdivision plats;
 - b) the costs of maintenance [including replacement] of the signs, lights, gates, landscaping and drainage systems within the subdivision;
 - c) the costs of maintaining records of the maintenance activities [and the costs thereof] carried out within the subdivision including the costs of rendering bills for and collecting the Annual Maintenance Charges;
 - d) the costs of carrying out such other activities for the benefit of the subdivision as shall from time to time be determined by Declarant, its successors and assigns.

Declarant is granted a lien upon the lot[s] and all improvements thereon of each lot owner for the amount of any Annual Maintenance Charge remaining unpaid after April 1 of each year.

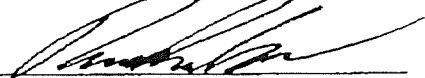
- 49) **PROPERTY OWNERS' ASSOCIATION.** The assigns of Declarant may include a Property Owner's Association [hereinafter the "Association"] that may hereafter be organized. When a Property Owners' Association is formed, each lot owner shall be required to join the Association and hereby agrees to be bound by all of the bylaws, rules and regulations of the Association not inconsistent with these Restrictions. Declarant may assign to the Association from time to time all or some of his rights and duties under the Restrictions; and, after such assignment, the Association shall be entitled to the full exercise of such rights and duties in the same manner as though exercised by Declarant. In the event of the assignment of a duty, Declarant shall thereafter no longer be responsible in any way for the fulfillment of such duty. Such assignments shall be evidenced by the recording by Declarant of a notice of such assignment in the Haywood County Registry. When Declarant assigns to the Association its right to collect the Annual Maintenance Charge, Declarant shall make such transfer to the Association effective as of January 1 of the year of such transfer.
- 50) **ARCHITECTURAL REVIEW COMMITTEE.** The assigns of Declarant may include an architectural review committee [hereinafter the "ARC"] comprised of Declarant and no more than three [3] members of the Property Owners' Association. After such assignment, the ARC shall be entitled to the full exercise of such rights and duties in the same manner as though exercised by Declarant. At such time as Declarant has sold all of the lots within the subdivision to third party lot owners, Declarant shall assign all of its architectural review rights to the ARC and shall resign from such committee. Actions of the ARC shall be considered to be "action by Declarant" governed by and subject to the protections of Paragraph 53 herein.
- 51) **AMENDMENT AND VARIANCES BY DEVELOPER.** Declarant, in its sole discretion, shall have the right to amend the Restrictions [in whole or in part] at any time by executing a written instrument making said changes and having such instrument duly recorded in the Registry of Deeds, Haywood County, North Carolina. Declarant reserves the right, in its sole discretion, to grant variances from the Restrictions on an individual basis. Declarant reserves the right in each instance to add additional covenants, restrictions, reservations, easements and conditions in respect to lands conveyed in the future by Declarant, and to amend the covenants, restrictions, reservations, easements and conditions from time to time, but such amendments shall not at any time alter the rights which shall have already been vested in any persons prior to such amendments. The decision of Declarant to grant or not to grant variances as herein provided is discretionary and shall not be subject in any way to appeal or review by any board, agency, tribunal or court.
- 52) **ACCESS.** Declarant retains and reserves the right to grant access [for ingress, egress and all utility purposes] by easement or right-of-way over and across any of the roadways, rights-of-way and easements within the subdivision covered by the Restrictions for the benefit of additional real property now owned or hereafter acquired by Declarant.
- 53) **ACTION BY DEVELOPER.** Whenever any action by Declarant is allowed or required, any opinion of Declarant is required, any exercise of discretion by Declarant is allowed or required or the written permission of Declarant is required, the exercise of such functions shall be within the sole, absolute and complete discretion of Declarant and shall not be subject in any way to appeal or review by any board, agency, tribunal or court. The exercise of such functions by Declarant shall not be held subject to or be governed by any standard of reasonability.
- 54) **ADDITIONAL PHASES OF THE PRESERVE AT JONATHAN CREEK.** In the event that Declarant designates additional real property located in Ivy Hill Township, Haywood County, North Carolina, to be additional phases of THE PRESERVE AT JONATHAN CREEK [by filing formal plats in the Haywood County Registry], all such real property [including this Phase 1] shall be unconditionally considered as a single subdivision and part of a coherent and connected development served by a connected system of easements and rights-of-way for roads and utilities regardless of when such additional phases may be acquired, developed or recorded. Accordingly, all lot owners in the various phases of THE PRESERVE AT JONATHAN CREEK shall be members of the same property owners' association.

- 55) **RUN WITH THE LAND.** These covenants, restrictions, reservations, easements and conditions shall run with the land and shall be binding upon all parties, their respective heirs, successors and assigns.
- 56) **ENFORCEMENT.** Enforcement of the Restrictions shall be by any proceeding at law or equity against any person or persons violating or attempting to violate or circumvent any covenant, restriction, reservation, easement and/or condition, either to restrain or enjoin violations, or to recover damages, or by any appropriate proceeding at law or equity against the land to enforce any lien created by the Restrictions. The remedies given herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of Declarant or lot owners to exercise any or all of the others or those that may be permitted by law or equity. The failure to enforce any covenant, restriction, reservation, easement and/or condition contained herein, however long continued, shall not be deemed a waiver of any right to do so thereafter as to the same breach or as to a breach occurring prior to or subsequent thereto and shall not effect its enforcement. Enforcement procedures may be instituted by any lot owner, Declarant, the successors or assigns of Declarant and/or the Property Owners' Association.
- 57) **SEVERABILITY.** Should any covenant, restriction, reservation, easement, condition, article, section, subsection, sentence, clause, phrase or term herein contained be declared void, invalid, illegal or unenforceable [for any reason whatsoever] by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such adjudication shall in no way affect any other provisions herein and such remaining provisions are severable and shall remain in full force and effect.
- 58) **ATTORNEY FEES.** The prevailing party in any action brought under or by virtue of these covenants, restrictions, reservations, easements and conditions or which is applicable in any way to same shall be entitled to recover their full, actual attorney fees as a part of the taxable court costs in such action and any legal fees resulting from the violation or attempted violation of the Restrictions shall be paid for entirely by the violating party.



IN WITNESS WHEREOF, Declarant has set its hand and seal the day above first written.


PRESERVE AT JONATHAN'S CREEK, LLC

By 
Ronald L. Hooker
Managing Member

STATE OF NORTH CAROLINA
HAYWOOD COUNTY

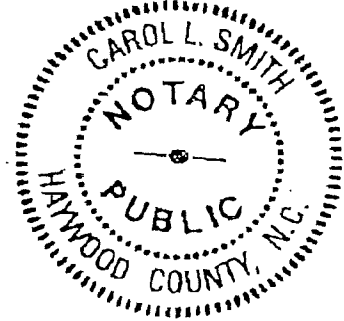
I, a Notary Public of the County and State aforesaid, certify that Ronald L. Hooker, the Managing Member of Preserve at Jonathan's Creek, LLC, an Indiana limited liability company duly authorized to do business in North Carolina, personally appeared before me this day and acknowledged the execution of the foregoing instrument, *IN BEHALF OF THE COMPANY.*

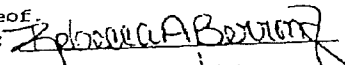
Witness my hand and official stamp or seal, this 12TH day of January 2005.


Notary Public

My Commission Expires:

APRIL 8, 2007



State of North Carolina, Haywood County
The Foregoing Certificate(s) of
CAROL L SMITH /NP
is (are) Certified to be Correct.
This Instrument was filed for Registration on this
18th Day of January, 2005 in the Book and Page shown
on the First Page hereof.
Amy R. Murray By: 
Deputy